

Remarks

Applicants have received and reviewed the Office Action dated June 12, 2009. By way of response, Applicants have cancelled claim 3 without prejudice. Claims 1, 10, and 12 have been amended. After entry of the amendment, claims 1-2 and 4-16 will be pending. The amendment is supported by the specification, including for example at page 4, lines 29-31 and page 6, lines 6-8, and does not introduce new matter.

Specification

The Examiner indicated that the use of various trademarks was noted in the application, and indicated that trademarks should be capitalized wherever they appear and be accompanied by the generic terminology. The specification has been amended accordingly. Applicants submit the amendment to the specification do not introduce new matter. Withdrawal of the rejection is requested.

35 U.S.C. § 112

Claims 10 and 12 were rejected under 35 U.S.C. § 112, second paragraph, as indefinite. The trademarks and trade names have been removed from the claims. Applicants submit the claims as amended fully comply with § 112, second paragraph. Withdrawal of the rejection is requested.

35 U.S.C. § 102(b)

Claims 1, 2, 6-8, 13 and 14 were rejected under 35 U.S.C. § 102(b) over JP 2003-144372 to Omachi. Applicants respectfully traverse this rejection.

In order to anticipate a claim, the prior art reference must teach each and every element of the claim. *Verdegall Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987; MPEP § 2131. The identical invention must be shown in the same complete detail as is recited by the claims. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989).

Independent claims 1 and 13 have been amended to recite that the biocide is introduced into the washing activity at a pH of between 2 and 12. The Omachi reference does not disclose this element. Omachi therefore fails to disclose all the elements of claims 1 and 13.

Claims 2 and 6-8 depend from claim 1 and claim 14 depends from claim 13. Omachi fails to disclose all the elements of these claims for the same reasons as claims 1 and 13.

Withdrawal of the rejection is requested.

35 U.S.C. § 103(a)

(1) Claims 3 and 4 were rejected under 35 U.S.C. § 103(a) over Omachi as applied to claim 1 above. Applicants respectfully traverse this rejection.

Claim 3 has been incorporated into claim 1. The rejection is therefore addressed insofar as it may apply to claims 1 and 4 as amended.

To make a *prima facie* case of obviousness, all the limitations of the claims must be taught or suggested in the references cited by the Examiner and all the teachings of the prior art need to suggest the claimed subject matter to the person of ordinary skill in the art. *In re Kotzab*, 217 F.3d 1365, 1370 (Fed. Cir. 2000). As articulated by the Supreme Court in a recent case, a combination is obvious if it is no more than the predictable use of known elements according to their established functions; and there is a reason to combine the known elements. *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398 (2007). “[I]t remains necessary to identify the reason why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed.” *Id.* Applicants submit that the Office Action has failed to establish that the cited reference teaches or suggests all the claim limitations and that one of skill in the art in view of the cited reference had a reasonable expectation of successfully arriving at the claims.

The Office Action acknowledges at page 6 that Omachi does not disclose or suggest that the biocide is introduced into the washing activity at a pH of between 2 and 12. The Office Action alleges that since the concentration of ozone (biocide) directly relates to pH, it is a result effective variable. Therefore, the Office Action alleges it would have been obvious to one of skill in the art to optimize the pH through routine experimentation to enhance cleaning and sterilizing efficiency. Applicants do not agree.

A particular parameter must first be recognized as a result-effective variable before the determination of the optimum range of said variable might be characterized as routine experimentation. *In re Antonie*, 559 F.2d 618 (CCPA 1977). The Office Action has not provided any evidence that the concentration of ozone (biocide) is directly related to pH.

Moreover, Omachi does not disclose or suggest that the biocide activity of the ozone is correlated to or a function of the pH. Therefore, the allegedly optimizable parameter (pH) was not recognized in Omachi to be a result-effective variable and optimization of said variable is not routine experimentation.

In view of the foregoing, Applicants submit the Office Action has failed to establish a *prima facie* case of obviousness. Omachi does not disclose or suggest all the elements of the claims and fails to provide a reasonable expectation of successfully arriving at the claims. Withdrawal of the rejection is requested.

(2) Claim 5 was rejected under 35 U.S.C. 103(a) over Omachi as applied to claim 1 above, and further in view of Parker (U.S. 5,899,215). Claim 9 was rejected under 35 U.S.C. 103(a) over Omachi as applied to claim 1 above, and further in view of Schouten (U.S. 6,176,244). Claim 10 was rejected under 35 U.S.C. 103(a) over Omachi and Schouten as applied to claim 9 above, and further in view of Linter (U.S. 3,600,317), Renfrow (U.S. 2002/0037821), and Kanlun (U.S. 5,399,285, and as evidenced by Halverson (U.S. 5,874,392). Claim 11 was rejected under 35 U.S.C. 103(a) over Omachi as applied to claim 1 above, and further in view of Batka (U.S. 3,775,330) and Weimer (U.S. 3,623,988). Claim 12 was rejected under 35 U.S.C. 103(a) over Omachi in view of Batka and Weiner as applied to claim 11 above, and further in view of Binstock (U.S. 5,958,855). Applicants respectfully traverse these rejections.

Omachi does not disclose or suggest all the elements of the claims and fails to provide a reasonable expectation of successfully arriving at the claims for the reasons discussed above. None of the secondary references cited in the Office Action cure the deficiencies of the primary Omachi reference. The Office Action therefore has failed to establish a *prima facie* case of obviousness.

Withdrawal of the rejections is requested.

(3) Claims 15 and 16 were rejected under 35 U.S.C. 103(a) over Omachi in view of Lausberg (U.S. 4,076,146). Applicants respectfully traverse these rejections.

The Office Action at page 14 acknowledges that Omachi does not disclose or suggest a detergent inlet. The secondary Lausberg reference fails to cure the deficiencies of the primary

Omachi reference. Lausberg does not disclose a ware washer comprising an ozone generator and the Office Action has not provided any evidence that the detergent inlet disclosed by Lausberg is suitable for use in a ware washer that comprises an ozone generator as in Omachi. The Office Action therefore has failed to establish that the cited combination of references had a reasonable expectation of successfully arriving at Applicants' claims. Withdrawal of the rejection is requested.

Summary

In view of the above amendments and remarks, Applicants respectfully request a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Please consider this a PETITION FOR EXTENSION OF TIME for a sufficient number of months to enter these papers or any future reply, if appropriate.

Please charge any additional fees or credit any overpayment to Deposit Account No. 13-2725.

Respectfully submitted,

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